

## STATE OF VERMONT

## HUMAN SERVICES BOARD

In re ) Fair Hearing No. 15,126

)

Appeal of )

)

INTRODUCTION

The petitioner appeals the decision by the Department of Social Welfare denying the petitioner's claim that she was underpaid Fuel Assistance and Food Stamps during the 1996-97 heating season. The issue is whether the petitioner should have been found eligible for fuel assistance during that time, and, as a result of that determination, whether the Department correctly calculated her Food Stamps during that period.

FINDINGS OF FACT

The facts of the petitioner's case are complicated but, fortunately, except where indicated below, they are not in dispute. In June, 1996, the petitioner moved into a new apartment. She signed a lease stating that heat was included in her rent but that she was responsible for her other utilities, including electric.

The petitioner's landlord had recently converted the petitioner's apartment building from electric to gas heat. However, he did not disconnect or remove the old electric heat units in all the rooms of the petitioner's apartment. The petitioner claims she did not know that the heat unit in one room was electric, and because she thought all her heat was included in her rent, last winter she liberally used the electric heat in that unit in addition to her gas heat. In subsequent discussions with the Department the landlord has maintained that the gas heat should have been sufficient to heat the petitioner's entire apartment.

In June, 1996, the Department granted the petitioner \$10 a month in Food Stamps based on her income and on the fuel and utility deduction she was entitled to because her heat was included in her rent.

The petitioner did not apply for fuel assistance for the 1996-97 heating season within the time limits for applying for that program (early October, 1996). In November, she filed a late application, which the Department denied because the petitioner had indicated that heat was included in her rent. The Department maintains, however, that even if the petitioner had indicated on her application that she was responsible for her own heat, her application would have been denied because she did not allege any "good cause", which was necessary under the regulations for having any late application considered.

In December or January last year, the petitioner discovered (when she received her electric bill) that she

was being charged for the electric heat she was using.

In February, 1997, the petitioner again applied for fuel assistance based on the fact she had learned that not all the heat she was using was included in her rent. This application was denied as having been filed beyond the "absolute" December 31, 1996, deadline in which the Department considered any late fuel assistance applications. The petitioner did not appeal any of the decisions regarding fuel assistance for the 1996-97 heating season.

In February, 1997, the petitioner also applied for essential person benefits for an individual she said was living with her. The Department denied this application on the basis that the individual did not meet the disability criteria for that program. The petitioner did not appeal this decision.

At the time the petitioner applied for essential person benefits the Department refigured the petitioner's Food Stamps based on the information provided by the petitioner about the other person in her household and on her landlord's providing of a form shelter statement that the petitioner was responsible for her primary source of heat, which the landlord then indicated was electric. This resulted in the petitioner receiving an increase in Food Stamps to \$17 for February and \$19 for March, 1997.

Over the course of the next few months the Department made inquiries of the petitioner's landlord in an attempt to clarify the petitioner's responsibility for her heat. In July, 1997, the landlord furnished information that the petitioner's electric heat was considered "optional", but that gas heat was the primary heating source, and that this was included in the rent and should have been sufficient to heat the petitioner's apartment. The Department indicated, however, that in retrospect for Food Stamp purposes it will treat the petitioner as having been in an unheated rental from February through June, 1997, because of the misleading information previously provided by her landlord.

In August, 1997, the Department raised the petitioner's Food Stamps to \$65 a month based on the petitioner's reporting that she was now living alone, on the fact that she was considered to be in a heated rental, and on a recent change in the fuel assistance regulations (see infra) that allowed a "nominal" fuel assistance payment of \$10 to persons in heated rentals in order for them to qualify for a higher fuel and utility deduction for Food Stamps (see infra).

When she was notified of this increase, the petitioner requested that the Department make the increase in her Food Stamps retroactive to September, 1996. When the Department refused, the petitioner requested the instant fair hearing. Hearings in this matter were held on September 17 and October 15, 1997.

The petitioner does not dispute that the gas heat provided by her landlord is sufficient to adequately heat her apartment. The petitioner admits that she used the electric heat last year because she likes a warm apartment and didn't think it was separate from the heat to the rest of her apartment.<sup>(1)</sup>

However, the petitioner holds the Department responsible for her \$212 overdue electric bill, which appears to be mostly the result of the electric heat the petitioner used last winter. It does not appear that the petitioner understands that the change in the Fuel Program regulations that resulted in the increase in her Food Stamps was effective only as of the 1997-98 heating season (see infra). Her argument appears to be that she should have been eligible for a "nominal" fuel assistance check last winter, and, as a result, should have also qualified then for a larger fuel and utilities deduction from her income for Food Stamp purposes, which would have given her a larger Food Stamp allotment during that time.

## ORDER

The Department's decision is affirmed.

## REASONS

Effective November 1, 1997, the fuel assistance regulations were amended to provide for a "nominal annual benefit of \$10" to households who have heat included in their rent and to individuals who rent rooms in someone else's living unit. W.A.M. § 2906. Prior to this amendment, roomers and households with heat included in their rent were not eligible for fuel assistance.

The above provision was enacted so that households with heat included in their rent could take advantage of changes in the Food Stamp regulations, effective March 1, 1997, and qualify for the same--more liberal--fuel and utility standard deduction from income as those households that incur separate heating costs, provided that those households received at least some fuel assistance payments. See Procedures Manual § P-2510(E)(3)(e)(i).

As noted above, based on information that was provided by the petitioner's landlord, the Department in determining the petitioner's eligibility for Food Stamps considered the petitioner to be in a heated rental from June, 1996, through January, 1997; but in an unheated rental from February through June, 1997. The Department admits (and the petitioner does not dispute) that its determination for the latter period turned out to be erroneous, but that it will not consider the petitioner to have been overpaid during that time.

The petitioner does not maintain that the Department's decision that she was in a heated rental from June, 1996, through January, 1997, was erroneous. She argues, however, that she should have been eligible for the \$10 "nominal" fuel assistance payment for that period, thus allowing her the same fuel and utility deduction for Food Stamps that she would have received (and, from February through June, 1997, did receive) had she been in an unheated rental. As noted above, however, even if it could be determined that the petitioner filed a timely application for fuel assistance during that period, the eligibility of households in heated rentals for a "nominal" fuel assistance benefit did not become effective until November 1 of this (1997-98) heating season.

Therefore, it must be concluded that there is no factual or legal basis to determine that the petitioner was eligible for any more fuel assistance or Food Stamps than what she has received to date. The petitioner may well have a claim against her landlord for the excess electric bill she incurred as a result of using auxiliary electric heat in her apartment last winter. However, inasmuch as the Department's actions in her case were in accord with the regulations in effect at the time, the decision denying the petitioner's claim of an underpayment of Food Stamps and fuel assistance for that period must be affirmed. 3 V.S.A. § 3091(d) and Fair Hearing Rule No. 17.

1. The petitioner's lease makes no distinction between electric and gas heat; and it is certainly arguable that the landlord was required to furnish all the petitioner's heat, from whatever source. The petitioner does not appear to understand, however, that the Board has no authority to address the issue of whether she or her landlord is responsible for the portion of her electric bill (assuming this can even be

determined) that was used for heat last winter.